

JUDGE'S PROCEDURAL RULES AND POLICIES

Workers' Compensation Automation and Integration System (WCAIS) is the official repository for all documents related to a Dispute (matter pending) before a Workers' Compensation Judge. All documents, including evidence and briefs, that would have been submitted to a Workers' Compensation Judge by mail or in person prior to WCAIS should now be uploaded into WCAIS. If Social Security numbers appear on any such document, they should be completely redacted before the document is uploaded, unless otherwise specified below. All communications with the Judge, including but not limited to requests, should be submitted through WCAIS unless otherwise specified by the Judge.

HEARING PROCEDURES

1. What is the first event and what will occur?

The first event will be a virtual hearing. The moving party should be prepared to present a prima facie case. Witness testimony will be expected and counsel should determine whether any anticipated witness is incapable of virtual participation in advance of the hearing. Counsel for the Claimant should provide an email address for the Claimant, if available, so that the Claimant can receive the appropriate TEAMS invitation.

a. List any documents required at the first event:

First Hearing Statements are permitted but not required. The moving party should upload the Exhibits necessary to establish a prima facie case. The Exhibits should be uploaded prior to the commencement of the hearing. The admissibility of uploaded Exhibits will be determined on the Record.

b. Should documents be uploaded as Exhibits or Letters to the Judge?

Any document that counsel believes should be part of the Record should be uploaded as an Exhibit.

2. Describe the format of your hearings (e.g., serial, one day – one trial).

The format of the hearing is determined by the nature of the Petition. In most instances, serial hearings will be conducted.

3. Are you willing to change the hearing format upon request?

Counsel seeking a change in the format of the hearing should submit a WCAIS Request or make a Request at the time of the hearing. A change in the hearing format will be dictated by agreement of the parties, reasons for the change and/or the interests of judicial economy.

4. What factors will you consider in deciding whether to conduct a hearing in-person?

An in-person hearing will be allowed following the first hearing in the event that the parties submit a WCAIS Request and provide a rationale. Factors that may influence the decision include, but are not limited to, the following: lack of ability to participate virtually; need to personally view a disfigurement that cannot be adequately seen virtually or depicted in a photograph; difficulties in communicating/understanding the witness; need for the witness to testify from multiple documents.

5. What factors will you consider in deciding whether to conduct a virtual hearing by audio only or by audio with video?

Audio participation will be permitted for status hearings. Otherwise, any hearing where testimony will be presented will be virtual unless the opposing party consents to audio only participation in advance.

6. What procedure do you follow if a party fails to appear at a hearing?

The hearing will be continued and rescheduled. The party who failed to appear will be given the opportunity to explain their absence at that time

7. Do you have special procedures for psychological injury cases?

In advance of the first hearing the parties should advise if “special procedures” are warranted. Those procedures, if deemed necessary, will be established during a conference call that will be scheduled prior to the commencement of any hearing.

SUPERSEDEAS PROCEDURES

1. What are your procedures for supersedeas hearings?

Supersedeas hearings are conducted as a first hearing. Exhibits in support of and in opposition to supersedeas should be uploaded.

a. Will testimony be heard?

Counsel for the Claimant will be permitted to present testimony or an affidavit in lieu of testimony.

b. Is additional time generally granted to obtain medical evidence?

Additional time (14 days) is generally permitted. Counsel should seek the consent of opposing counsel prior to the commencement of the hearing.

c. Under what circumstances will you reconsider a supersedeas order?

Supersedeas is subject to reconsideration at a subsequent hearing or upon a WCAIS Request.

d. Do you generally use written orders for denials?

An Interlocutory Order will be issued following the initial hearing on a Petition where a Request for Supersedeas is included.

e. What is required for employee’s counsel to obtain interim fee approval?

Counsel seeking approval of a fee should submit an executed fee agreement as an Exhibit.

f. Describe any other procedures for supersedeas hearings:

Procedures are in accordance with the Pennsylvania Workers’ Compensation Act and the WCJ Rules.

g. Describe procedures for special supersedeas hearings, if different:

My procedures do not differ.

WITNESSES/EXHIBITS

1. What are your rules regarding taking testimony?

Witness testimony at a hearing is preferred. If counsel intends to call a witness other than the Claimant, advance notice will be required. In that instance, counsel should consult with opposing counsel to determine

if sufficient time has been allocated. Hearings can be specially scheduled for the purpose of taking lay or expert witness testimony.

2. Do you require testimony at a virtual hearing, an in-person hearing, or by deposition?

Testimony at a virtual hearing is preferred unless it is determined that an in-person hearing will be necessary. Counsel may schedule and take the deposition of a lay or expert witness in accordance with the Rules.

3. Under what circumstances will you change your requirements for presentation of testimony?

The need for in-person testimony will be determined on a case-by-case basis. It is anticipated that an in-person hearing will be conducted at the conclusion of the case prior to the close of the Record.

4. If counsel wishes to present the testimony of a witness (either virtually or in-person), do you require prior notice? Yes, if the witness is someone other than the Claimant. If yes, how much notice do you require? Counsel should identify the witness as promptly as possible so that sufficient time can be allocated and the availability of the witness can be determined.

5. What is your procedure regarding the order of expert medical testimony when cross petitions are filed?

The party with the burden of proof will be required to proceed first. This will be determined at the first hearing. No testimony will be required until all parties have notice of what is at issue.

6. Do the parties need to upload the Bureau and WCOA documents as exhibits or will you admit them electronically as Judge exhibits?

The WCJ will upload all relevant documents filed with the Bureau as well as all necessary WCOA and WCAB documents. Parties should upload any Bureau document(s) not filed with the Bureau.

7. Do you require counsel to upload exhibits to WCAIS before or after the hearing? Exhibits should be uploaded prior to the hearing. With regard to multiple page documents, e.g., medical records, while all documents must be exchanged, only the relevant portion of documents should be uploaded as Exhibits. Confidential information should be redacted. If before, how far in advance of the hearing must they be uploaded? Exhibits should be uploaded as soon as possible prior to the scheduled hearing.

8. When will you rule on objections to exhibits?

Objections will be ruled upon at the time that they have been preserved. It is suggested that objections be preserved within 30 days of when the applicable Exhibit/testimony has been offered rather than with the submission of argument. This is particularly true with objections that may be dispositive.

9. What is your procedure for handling discovery disputes?

A telephone conference may be conducted to address discovery disputes. Attendance at a deposition will be considered upon request or at the Judge's discretion.

- 10. What is the last day to file written preservation on deposition objections? By Rule, deposition objections can be submitted with proposed Findings of Fact. It is recommended, however, that objections be raised as promptly as possible.**

COMPROMISE & RELEASES (C&Rs)

- 1. Describe your procedures regarding the review of C&R Agreements:**

C&R Agreements are reviewed prior to the conduct of the scheduled hearing.

- a. Are you willing to allow amendments of existing petitions or do you require the filing of a separate Petition Seeking Approval of a C&R Agreement?**

Existing Petitions may be amended but a separate Petition will be required if the parties seek a decision on the merits on a pending Petition.

- b. Are parties required to provide a draft of the C&R Agreement before the hearing? If yes, how far in advance of the hearing do you need to receive it?**

A draft copy is not required but a fully executed copy should be uploaded as promptly as possible in advance of the scheduled hearing.

- c. Should the parties upload the signed C&R Agreement, including the fee agreement and any other attachments, before or after the hearing?**

The executed C&R Agreement, with all necessary and required attachments, should be uploaded in advance of the scheduled hearing. The C&R Agreement will be marked as a Joint Exhibit.

- d. Should child support documents be uploaded as a separate exhibit?**

The Act 109 affidavit and lien search should be uploaded as a separate Exhibit. It will be marked as a Claimants' Exhibit.

- e. Should Social Security numbers and other confidential information be redacted from the C&R Agreement and Act 109 documents?**

All confidential information should be redacted before uploading the document as an Exhibit.

- f. Will you sign bench orders?**

Bench Orders will not be issued but the parties will be advised at the conclusion of the hearing if the Claimant has demonstrated the requisite understanding for approval. A formal decision is generally issued with a day of the hearing.

- g. Describe any other procedures you have for C&R Agreements:**

If a resignation of employment is an essential part of the compromise settlement, that fact must be placed on the Record. An agreement that resolves "any and all injuries" will be permitted with the caveat regarding the enforceability of that provision. All necessary documents must be fully executed before they are uploaded.

STIPULATIONS RESOLVING DISPUTES

- 1. What are your usual procedures regarding the submission, review, and adoption of stipulations?**

Stipulations should comply with the WCJ Rules. That includes execution by the Claimant as well as counsel.

2. Should the fee agreement be part of the stipulation or separate exhibit?

Fee should be described in the Stipulation but the fee agreement should be uploaded as a separate Exhibit.

3. Should child support documents be uploaded as a separate exhibit?

The redacted Act 109 affidavit, lien search and any relevant support documents should be uploaded as a separate Exhibit.

4. What other exhibits should be uploaded (i.e. medical bills, etc.)?

All relevant evidence referenced in the Stipulation should be uploaded.

5. Should other exhibits uploaded as be part of the stipulation or as separate exhibits?

They should be uploaded as separate Exhibits since the Stipulation will be attached to the decision. The decision will reference the Stipulation and any significant information included in the Stipulation. Counsel can submit a proposed decision as part of the Stipulation in the appropriate case.

6. When should Social Security numbers and other confidential information be redacted from the stipulation and Act 109 documents?

All confidential information should be redacted from the Stipulation before it is uploaded.

7. Describe any other procedures you have for stipulations:

Parties should be specific in describing what issues/Petitions are being resolved by the Stipulation pursuant to the WCJ Rules.

BRIEFS AND PROPOSED FINDINGS

1. Will you close a case via WCAIS submission or is a final hearing required?

Record is closed at a final hearing. The need for subsequent WCAIS submissions will be addressed at the final hearing to prevent disputes regarding the admissibility of Exhibits.

2. What are the time requirements for final submissions and what procedures are taken when time requirements are not met?

The time requirements for submission of argument will be established at the final hearing with the agreement of counsel. Allotted time may be increased for good cause with the consent of the opposing party.

3. Describe any preferences regarding the format and content of final submissions:

Argument may include briefs and/or proposed Findings of Fact, Conclusions of Law and Order. Counsel are cautioned to be succinct in their submissions and should refer to prior decisions to determine a preferable format.

MANDATORY MEDIATIONS

1. List the offices where you conduct mandatory mediations:

My assigned in-person mediation locations are Brookville and Pittsburgh. However, I am available to conduct a virtual mediation regardless of the assigned hearing office upon Request.

2. What factors will you consider in deciding whether to conduct a mandatory mediation virtually or in-person?

Mediations will be conducted virtually unless the parties indicate a need for an in-person mediation when the initial Request is submitted on WCAIS.

3. What factors will you consider in deciding whether to conduct a virtual mandatory mediation by audio only or by audio with video?

Virtual mediations will be conducted by audio with video. Counsel should Request that a participant be allowed to attend by audio only prior to the commencement of the mediation. Participation by audio only is permitted but not encouraged.

4. Are you willing to allow counsel or a party to participate virtually in an in-person mandatory mediation? If so, under what circumstances?

In the event that an in-person mediation is scheduled, all participants must attend and no virtual participation will be permitted.

5. Do you require a Mediation Statement? Yes If yes:

- a. What information do you require in that Statement?

Format is not critical, but a brief position statement is suggested. Preparation and submission of a Mediation Statement increases the likelihood of success. Statement should include the following: date of injury; nature of accepted injury; AWW and benefit rate; age of the Claimant; liens; amount of outstanding medical; support issues; open medical; and whether a resignation will be required. Counsel will also be expected to exchange a demand and an offer prior to the commencement of the mediation.

- b. What documents, if any, must accompany the Statement?

Counsel should include any document not already part of the Record.

- c. How far in advance of the mediation must the parties submit the Statement and accompanying documents?

A submission two days in advance is encouraged.

6. If there is a request to postpone a mandatory mediation, will it be rescheduled? A mediation may be rescheduled following a postponement upon the submission of a WCAIS Request. If so, how long until it is rescheduled? Availability of mediation dates can vary but it may take between 60 and 90 days before the mediation is rescheduled.

7. Are you willing to conduct more than one mandatory mediation session per Dispute?

If it appears that additional time is needed, the mediation will be rescheduled. The rescheduled date will be determined at the conclusion of the initial mediation and will be specially set to prevent delay.

8. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?

Counsel should provide at least 24 hours notice of a Request to cancel or postpone a scheduled mediation.

9. What else should the parties know or do before the mediation?

Counsel should discuss the process with their client and exchange a demand and an offer in advance.
Counsel should also determine any impediments to resolution as promptly as possible.

VOLUNTARY MEDIATIONS

1. Do you conduct Voluntary Mediations?

Voluntary mediations are conducted and are schedule following the appropriate WCAIS Request.

2. How should the parties request a Voluntary Mediation?

Counsel should submit the Request in WCAIS or ask the adjudicating WCJ to schedule the mediation in SharePoint.

3. List the locations where you conduct in-person voluntary mediations:

My assigned locations are Brookville and Pittsburgh

4. Will you conduct virtual voluntary mediations? If yes, for which WCOA Districts will you conduct them?

All mediations will be virtual. For that reason, I am available to conduct a voluntary mediation for any WCOA location in the Commonwealth.

5. Do you mediate Disputes assigned to you for hearing and decision?

Mediation of an assigned case will be conducted on a limited basis. Parties must agree and the credibility of the Claimant must not be at issue.

6. Do you mediate Disputes in which one or both parties are unrepresented? If yes, describe any special procedures you have for such cases:

Mediation of a Dispute with an unrepresented party is conducted in the same manner as if the party was represented.

7. What factors will you consider in deciding whether to conduct a voluntary mediation virtually or in-person?
Same as for mandatory mediation.

8. What factors will you consider in deciding whether to conduct a virtual voluntary mediation by audio only or by audio with video?

Same as for mandatory mediation.

9. Are you willing to allow counsel or a party to participate virtually in an in-person voluntary mediation? If so, under what circumstances?

Same as for mandatory mediation.

10. Do you require a Mediation Statement? Yes If yes:

a. What information do you require in that Statement?

Same as for mandatory mediation.

b. What documents, if any, must accompany the Statement?

Same as for mandatory mediation.

c. How far in advance of the mediation must the parties submit the Statement and accompanying documents?

Same as for mandatory mediation.

11. After you approve a Voluntary Mediation Request, how long until it is scheduled?

Mediations are generally scheduled within 60 to 90 days of the Request.

12. Are you willing to conduct more than one voluntary mediation session per Dispute?

Same as for mandatory mediations.

13. If the party wants to request cancellation or postponement of a voluntary mediation on a Dispute assigned to you, should they contact you or the mediating Judge?

All Requests regarding the mediation after it has been scheduled should be directed to the mediating Judge.

14. What is the latest day before the mediation that cancellation or postponement, absent an emergency, can be requested?

Same as for mandatory.

15. What else should the parties know or do before the mediation?

Same as for mandatory mediations.

REQUESTS/MISCELLANEOUS

1. How far in advance do you require Requests for continuances, changes in hearing times, and extensions to be uploaded into WCAIS?

Request of this nature should be submitted within 24 hours with consent of the opposing party.

2. Under what circumstances do you conduct off the record conference calls?

Conference calls may be scheduled upon Request or at the discretion of the Judge following a hearing.

3. Under what conditions/circumstances do you accept e-mails from parties?

Parties may send an email and copy the opposing party. I encourage the most efficient and cost effective means of communication.

4. Do you adhere strictly to the duration listed for a Hearing or Mediation?

Time limitations are strictly enforced. Parties must respect the impact of exceeding scheduled time limits on others.

5. What is the best way to contact you in an emergency situation?

E-mail: jmctiernan@pa.gov

6. What is your snow/emergency cancellation policy regarding in-person and virtual events (i.e., do you follow a specific school district closing schedule, etc.)?

Consistent with posted WCOA policy. It is anticipated that virtual hearings/mediations will not be adversely impacted.